

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

JAMES CUDD, SR.,

Plaintiff,

vs.

TRISTAN KOHUT and PAUL REES,

Defendants.

CV-19-15-H-BMM-JTJ

ORDER

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on January 21, 2020. (Doc. 18). Neither party filed objections. The Court reviews for clear error any portion to which no party specifically objected. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

The Defendants have filed a motion to dismiss for failure to state a claim. (Doc. 9). The Magistrate Judge recommended that claims against Dr. Kohut in his

official capacity be dismissed. The Magistrate Judge did not clearly err in concluding that Cudd may not proceed with claims against Dr. Kohut in his official capacity because Dr. Kohut no longer works for the state and therefore no longer has an official capacity. (Doc. 18 at 6).

The Magistrate Judge also recommended that the Defendants' motion be dismissed with respect to their argument that the claims are barred by res judicata. Had there been a "valid final judgment" in state court, Cudd's claims in federal court may be barred by res judicata. *See Brilz v. Metropolitan Gen'l Ins. Co.*, 285 P.3d 494, 501 (Mont. 2012). However, as the Magistrate Judge noted, there has been no final judgment in state court. (Doc. 18 at 5 taking judicial notice of records of state court action). This Court finds no clear error in the Magistrate Judge's conclusion that the doctrine of res judicata presents no bar to Cudd's claims at this time.

IT IS ORDERED that the Findings and Recommendations (Doc. 18) are **ADOPTED IN FULL**.

IT IS FURTHER ORDERED:

1. Defendants' Motion to Dismiss (Doc. 9) is **GRANTED** in part. Any claim against Dr. Kohut in his official capacity is **DISMISSED**.
2. Defendants' motion to dismiss is **DENIED** in all other respects.

DATED this 19th day of February, 2020.

A handwritten signature in blue ink that reads "Brian Morris". The signature is fluid and cursive, with "Brian" on the top line and "Morris" on the bottom line.

Brian Morris
United States District Court Judge